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COMMISSION ON HUMAN RIGHTS

Fifty-sixth session

SUMMARY RECORD OF THE 59th MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 19 April 2000, at 3 p.m.

Chairperson: Mr. SIMKHADA (Nepal)

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RATIONALIZATION OF THE WORK OF THE COMMISSION

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GE.00-13313 (E)

The meeting was called to order at 3.10 p.m.

RATIONALIZATION OF THE WORK OF THE COMMISSION (agenda item 20) (E/CN.4/2000/112, 114, 120,122 and 123; E/CN.4/2000/CRP.1; E/CN.4/1999/104; E/CN.4/1999/WG.19/2 and 3; E/CN.4/Sub.2/1999/47)

1. Ms. ANDERSON (Chairperson of the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights), introducing the report of the Working Group (E/CN.4/2000/112), said that the report should be seen as a coherent whole and that the Working Group had endeavoured to reach a balanced position through extensive debate. The consideration of fundamental issues deserved as much attention as the recommendations of more immediate significance. The report of the Bureau of the fifty-fourth session of the Commission (E/CN.4/1999/104) was of a quality that had proved to be of great help to the Working Group in its deliberations, as had the clarity of the mandate that it had received from the Commission in the statement made by the Chairperson of the fifty-fifth session.

2. The Working Group's report was the result of compromise, as was evident from the concluding observations of delegations before the adoption of the report (E/CN.4/2000/CRP.1). The breadth of participation and the high level of interest in the debate had given vitality and real significance to the Group's work. The debates had been animated and had given rise to genuine dialogue. The Working Group had operated on the basis of consensus, as the Commission had requested, which had given it a sense of common purpose and had strengthened it in its determination to overcome suspicion and mistrust. It had thereby endeavoured to avoid two pitfalls, first that of too readily forgoing advances of substance and second that of isolating uncooperative delegations in the hope of forcing them into acquiescence. The Working Group did not claim that all its decisions were the right ones but it had worked in a way that was fair and open,with a genuine spirit of consensus.

3. The Commission must now decide the rhythm at which the task of reform should be conducted. It would be useful, before taking any new measures, to look closely at the implementation of the Group's recommendations. She hoped that the work that had been done would strengthen the Commission's willingness to make a concerted effort towards reaching the common human rights objectives and warmly thanked all those who had participated in the Group's work.

4. Mr. HARAGUCHI (Japan) congratulated the Working Group on its report, which was close to the best that could have been hoped for under the circumstances and would hopefully be adopted by consensus and without amendment. It was only the first step, however, and the reform process must follow. His delegation noted with satisfaction that many of its proposals had been taken into account in the report, particularly concerning the need to strengthen the complementary nature of the relationship between the Commission on Human Rights and the Third Committee of the General Assembly, the role of the Sub-Commission, the consideration of communications under the 1503 procedure, policies relating to mandate holders and the strengthening of the Office of the High Commissioner for Human Rights.

5. The Sub-Commission should definitely remain an advisory body and should not take positions by adopting resolutions. Thus, instead of spending much of their time, as some did, lobbying for the adoption of their draft resolutions, the experts of the Sub-Commission could study the fundamental issues calmly and carefully, so that their deliberations would be of greater use to the Commission.

6. With regard to the number of mandate holders, his delegation favoured a case-by-case approach. If special rapporteurs did not receive the necessary support, however, it would once again have to request a strict limit in numbers. It hoped that the general criteria laid down in the Working Group's report for the rationalization of mandates would be fully respected.

7. He said that his delegation regretted the over-abundance of draft resolutions that had to be addressed by the Commission and the fact that there were too many evening and even night meetings, and underlined the need to further rationalize the working methods of the Commission.

8. Mr. AMORIM (Brazil) said that he was satisfied with the results achieved by the Working Group and that, under the wise leadership of Ms. Anderson, it had brought about some improvements in the way the Commission worked, which were likely to provide better protection and promotion of human rights. As the Secretary-General of the United Nations had highlighted, it was very important to protect the most vulnerable and, therefore, to find more effective ways of enforcing international and human rights law and to fight against impunity. Likewise, as a result of the inhuman character of poverty, a new "global solidarity" was emerging, of which the President of Brazil was a strong advocate.

9. The Commission's debates, often politically motivated, did not always contribute to promoting human rights, nor did they favour such global solidarity. A highly critical article published on 19 April 2000 in the Swiss newspaper Le Temps, suggesting that the Commission on Human Rights issued punishments and pardons at random, should be cause for reflection. In that connection, he referred to an idea that had first been presented to the Commission at its fifty-fourth session by Mr. José Gregori, former Secretary of State for Human Rights and current Minister of Justice in Brazil. Mr. Gregori, who had been awarded the United Nations Human Rights Prize in 1998, had suggested that objective and universally accepted criteria should be drawn up by members to evaluate the human rights situation in the different countries of the world. He had also proposed that the Office of the High Commissioner for Human Rights should prepare a biannual report on the human rights situation in all parts of the world, the legitimacy of which would be safeguarded by its multilateral character and the credibility of which would therefore be difficult to challenge. The Commission would focus its attention on the most serious and systematic violations of human rights on the basis of the most independent and objective analyses available.

10. The drafting of a global report was not possible unless every country was willing to be scrutinized and criticized in a spirit of global solidarity and concern for the victims of injustice. The occasional discomfort that would cause for Governments would be outweighed by the fact that the analyses would be credible and that selectivity and politicization would be reduced. It would, of course, be useful to examine how such a proposal would be enforced, and above all,

how to guarantee the independence of those who would be responsible for drafting the global report, as well as how to follow up its conclusions. His delegation would like to know the opinions of the members of the Commission on the subject.

11. Mr. GOPINATHAN (India) welcomed the spirit of dialogue and compromise shown by the delegations that had participated in the work of the Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights.

12. In its report, the Working Group recognized the need to grant equal importance to civil and political rights and to economic, social and cultural rights. It also underlined the importance of a balanced allocation of resources within the Office of the High Commissioner. His delegation considered that such should be the case with financial as well as human resources.

13. His delegation fully supported the Working Group's opinion that the financial situation of the Office of the High Commissioner should be improved significantly through increased contributions from the regular budget of the United Nations but also from voluntary contributions. Voluntary contributions should not be earmarked.

14. With regard to the criteria for rationalizing mandates, his delegation underlined the need to maintain a balance between thematic mandates, to avoid duplication and to ensure that mandates always offered a clear prospect of improving the promotion and protection of human rights.

15. Whilst his delegation supported the recommendations made in Chapter Two of the report, it considered that the analysis, promotion and protection of human rights was above all the responsibility of States. The only way to make lasting progress in that area was through the strengthening of democratic institutions and national capacities, and the role of international human rights mechanisms should be to support the measures taken in that direction.

16. The Working Group had considered it necessary to strengthen the role of the Commission in determining the priorities of the Sub-Commission. Thus, the Commission was faced with the heavy responsibility of charting a clear course for the Sub-Commission whilst ensuring that it maintained a degree of initiative in carrying out research and studies.

17. With regard to the Commission's working methods, his delegation attached particular importance to meeting the deadlines for issuing documents, to the transparency of consultations and negotiations on resolutions and to the rationalization of the agenda.

18. Mr. KHORRAM (Observer for the Islamic Republic of Iran) expressed his appreciation of the report of the Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights. Nevertheless, he observed that some views had been omitted, which could damage the comprehensive nature of the report, and that some recommendations did not really reflect the opinions of many of the delegations that had participated in the negotiations. Furthermore, despite the fact that the Working Group's objective had been to increase the efficiency of the Commission's mechanisms, its report tended to encourage some duplication of activities.

19. As the report of the Bureau of the fifty-fourth session of the Commission (E/CN.4/1999/104) underlined, the establishment of country-specific mandates was one of the Commission's most sensitive and gravest tasks. Many participants in the review process for those mandates had remarked that the current procedure was unduly political, confrontational and selective. The Working Group had not paid enough attention to the issue and did not put forward any concrete solutions in its report to encourage dialogue and cooperation and to avoid confrontations on the matter.

20. Likewise, the Working Group had not paid due attention to considering country situations within the context of promotional activities and national capacity-building relating to human rights. It had offered no proposals for depoliticizing the Commission's work on "situations".

21. The issue of cooperation with the special procedures warranted in-depth consideration. Although many delegations, including his own, had addressed the legal aspects and nature of the cooperation, that was not reflected in the report. The concept of cooperation, as presented in Article 55 of the Charter of the United Nations, was positive and was based on encouragement, whereas the concept which was put forward in the report tended to be enforced and was distanced from the relevant legal basis.

22. The Working Group's report, as an official United Nations document, must have a specific legal foundation, follow the guidelines emanating from the Charter of the United Nations and international law and reflect all the views expressed in the consultations.

23. In spite of those considerations, his delegation joined the consensus in the hope that the effective implementation of all the recommendations contained in the report would enhance the effectiveness of the Commission's mechanisms, by ensuring that the mechanisms observed the principles of objectivity, impartiality, universality and indivisibility of all human rights and avoided any selectivity or politicization.

24. Mr. HAMIDON (Observer for Malaysia), after thanking Ms. Anderson for her efforts in chairing the Working Group, said that his delegation was nevertheless extremely disappointed with the report that had been submitted. First, the report did nothing to clarify the issue of special rapporteurs' term of office. Yet it was stipulated clearly in paragraph 7 (ii) of the statement made by the Chairperson of the fifty-fifth session of the Commission on Human Rights, dated 29 April 1999, that the maximum term of office for special rapporteurs should be six years, and that, as a transitional measure, those who had carried out their duties for over three years could only be reinstated for a further three years at most. The report made no reference to that provision. Such a rule would enable mandate holders to maintain the necessary detachment from and objectivity about the subject of their work. It would also provide for the regular renewal of perspectives and capacity-building. Many others shared his delegation's point of view, particularly the members of the Like-Minded Group and the Asian Group. His delegation deeply regretted that their views had not been taken into account.

25. With regard to the issue of cooperation with the mechanisms of the Commission on Human Rights, which was addressed in paragraph 25 of the report, his country's attitude had always been extremely positive. Malaysia had always willingly cooperated with the Commission's mechanisms, considering that international law, for all its imperfections, was the

best guarantee against arbitrariness and abuses of power. Nevertheless, his delegation did not think that there was a legal "obligation to cooperate" per se, particularly when a special rapporteur carried out an investigation into a country of which he or she was a national, when manifestly opposing the Government of that country. It was therefore time for the Commission on Human Rights to look into the issue of whether it was appropriate for special rapporteurs to examine cases involving their own country. Under Article 55 of the Charter of the United Nations, cooperation must be promoted, particularly through dialogue and capacity-building, appropriate but not imposed. Cooperation could not succeed unless the parties, including the mechanisms of the United Nations, had a sense of responsibility.

26. Mr. MOUNIR (Observer for Egypt) said that the Working Group's report was a balanced document that reflected a will to reconcile what were sometimes very differing points of view. Five lessons could be drawn from the Working Group's report. First, the key factor was to be in agreement about the objective, namely improving human rights protection, even if opinions varied about how to reach that objective. Second, respect for differences and willingness for dialogue were essential. Third, it needed to be recognized that the realization of human rights was a gradual process and excessively ambitious rules should not be laid down. Even the slightest progress was positive. Fourth, consensus was, of course, proof of universality, but lack of a consensus did not automatically signify lack of progress. The fact that no consensus had been reached simply meant that situations differed and that there were entirely legitimate specific cultural conditions at play. Finally, reviewing the mechanisms of the Commission on Human Rights must be an overall process; in other words, one aspect of human rights must not be given priority over another.

27. Ms. TERLINGEN (Human Rights Watch and Amnesty International) said that the Working Group had not fulfilled its mandate. It had provided no response to the serious problems faced by many rapporteurs, namely insufficient support from the United Nations and a lack of real cooperation from many States. It was regrettable that the Working Group had not adopted many of the recommendations made by the Bureau of the Commission, which it had recognized as being necessary for genuine changes to take place. The few recommendations made by the Working Group were insignificant, because of the wish to reach a consensus at all costs.

28. With regard to cooperation, the Working Group simply requested the Governments concerned to explain their reasons for failing to cooperate with special procedures. However, in its report to the Commission, the Bureau stated that the essential foundation on which the effectiveness of the Commission and its mechanisms rested was the responsibility of all Governments to cooperate fully with all those mechanisms. She fully endorsed that point of view. The Commission should, at the start of its sessions, call upon all States to invite mandate holders to visit their countries and should ensure that the Secretary-General of the United Nations was informed of any State that persistently refused to cooperate with the special procedures.

29. Human Rights Watch and Amnesty International said that the Commission should not only discuss the special rapporteurs' reports, as the Working Group suggested, but should allow adequate time for the debate and involve States, United Nations agencies and non-governmental organizations (NGOs). Special procedures could only be effective if the Office of the

High Commissioner for Human Rights provided them with the necessary support. Yet, despite the considerable rise in the number of mandates created since 1995, the resources allocated to them in the regular budget, far from having increased, had decreased during the same period. In that regard, the Commission should ask the Office of the High Commissioner to assess the resources needed to finance the services of people with appropriate expertise to assist the special rapporteurs. It should also urge its Member States to ask their delegations at the Fifth Committee of the General Assembly to vote in favour of the necessary resources.

30. She regretted the Working Group's proposal to deprive the Sub-Commission of the possibility of mentioning countries in thematic resolutions. Furthermore, the Working Group had failed to set a time limit for Sub-Commission membership, which was essential if the body were to be rejuvenated.

31. Finally, the weakness of the recommendations in the Working Group's report demonstrated once again the lack of political will on the part of many Commission members when it came to genuinely strengthening the entire system of special procedures.

32. Ms. SVENSSON-McCARTHY (Human Rights Advocates), speaking on behalf of her organization and three other NGOs, namely Earth Justice Legal Defense Fund, Pax Romana and the Lutheran World Federation, said that the Working Group's report, even if it did contain some positive aspects, such as the suggestions made concerning the 1503 procedure, fell short of expectations.

33. With regard to the issue of Governments' cooperation with the mechanisms of the Commission, it was important for Governments to explain the reasons for their failure to cooperate, but such explanations did not constitute an excuse per se, since under Articles 55 and 56 of the Charter of the United Nations, cooperation was a duty. Moreover, given the extreme importance of the urgent appeals made by the special rapporteurs, adequate replies from Governments were essential. In situations involving a threat to human life, the special rapporteurs and working groups needed the full cooperation of the Governments concerned. In that connection, she called upon all Governments to fulfil their obligations.

34. The Working Group rightly recommended that there should be an interactive debate following the introduction of a report by a special rapporteur. Such a debate must take place immediately after the presentation of the report in question, as proposed in paragraph 30 (ii) of the Working Group's report, even if that did require some rescheduling of statements by special guests. Human Rights Advocates endorsed the proposal to extend the mandate of the Special Rapporteur on the adverse effects of the illicit movement and dumping of toxic products and wastes so that the rapporteur would henceforth be responsible for all environmental issues which had adverse implications for the enjoyment of human rights.

35. The Working Group's recommendations about the Sub-Commission were extremely disappointing, whether it was the proposal to limit the Sub-Commission's mandate or the proposal to reduce the length of sessions. Overall, the Working Group's proposals could damage the Sub-Commission's efficiency, particularly in its capacity as a body with an important preventive role to play. As the Secretary-General and the High Commissioner for Human Rights had both emphasized, it was essential to pay more attention to the prevention of human rights

violations. The fact that the Sub-Commission could not adopt country-specific resolutions or make reference to country names was regrettable, but that should not prevent it from making recommendations to the Commission, so that the Commission could take appropriate action when human rights were violated or threatened in any part of the world.

36. Finally, Human Rights Advocates called upon all Governments to increase their funding to the Office of the High Commissioner. All it would take was a reduction, however marginal, in their military budgets.

37. Mr. PARY (Indian Movement "Tupaj Amaru") pointed out that the objective of rationalizing the work of the Commission was to rectify the current imbalance between civil and political rights and economic, social and cultural rights, the latter having been neglected by Western countries which were only seeking, through the Commission and its mechanisms, to maintain their neo-colonial domination over the Third World. The richest economic power used and abused the Commission on Human Rights, exploiting it for political reasons to put other countries in the dock. That power, however, was the one that did not pay its dues to the United Nations and that neglected the so-called "third generation" rights, such as the right to food, shelter and development, along with other issues such as the fight against extreme poverty and all forms of racial discrimination and the issues of foreign debt and structural adjustment.

38. In that regard, the Working Group's recommendations were far from satisfactory. Such was the case with the proposal to merge the mandate of the independent expert on structural adjustment with that of the Special Rapporteur on foreign debt. At a time when chaos prevailed in the financial system, instead of merging the two mandates, it would have been preferable to broaden their respective responsibilities. The other recommendations of the Working Group tended to weaken the mechanisms of the Commission and the Sub-Commission. A particular instance was the recommendations to reduce the duration of the session of the Sub-Commission and to limit its membership, to abolish some working groups and to limit the participation of NGOs in the work of human rights bodies.

39. Special rapporteurs and experts should be guided by the principles of independence, impartiality, transparency and objectivity. In accordance with the principle of equitable geographical distribution, candidates from developing countries should be appointed for such tasks. The Bureau of the fifty-fourth session of the Commission had recommended NGOs should nominate candidates for appointment as special rapporteurs, previously a right reserved exclusively for States. That had been seen as a significant move towards the democratization of the United Nations. The Working Group, however, had not adopted the recommendation.

40. For indigenous peoples, the rationalization of the Commission's mechanisms meant implicitly that the Working Group on Indigenous Populations would be dissolved as soon as the issue of the permanent forum for indigenous peoples had been resolved. The Commission should not forget, however, that the Working Group on Indigenous Populations was the only permanent body that was democratically open to indigenous people and their grass-roots organizations, regardless of whether they had consultative status with the Economic and Social Council. Abolishing the Working Group would mean depriving indigenous peoples of the right

to participate freely in the organs of the United Nations system. The Commission on Human to Rights should, on the contrary, maintain the Working Group on Indigenous Populations, assigning it a standard-setting mandate and expanding its membership to include indigenous representatives.

41. In the meantime, the Working Group had made no progress in the consideration of the draft declaration on the rights of indigenous peoples, which was precisely the purpose of its mandate. The lack of progress was due to the lack of political will on the part of States. The Commission should extend the Working Group's mandate and specify that the work must be completed in a reasonably short period of time, in accordance with the guidelines laid down by the General Assembly in resolution 41/120.

42. Mr. CHAKMA (South Asia Human Rights Documentation Centre) said that the Working Group had not addressed the fundamental issues raised at the fifty-fifth session of the Commission by the Asian NGOs dealing with human rights. Instead of enhancing the effectiveness of the Commission's mechanisms, the Working Group's recommendations were part of a conspiracy hatched by the Like-Minded Group of countries to avoid the scrutiny of international mechanisms, indeed to destroy them.

43. The Working Group's recommendation that the reports of special rapporteurs should be made available to Governments to give them the opportunity to comment and that those comments should be annexed to or distributed with the reports, could only be justified if the comments were also transmitted to the NGOs, in consultative status with the Economic and Social Council, of the country involved, and if their respective observations on the Government comments were also included in the reports of the special rapporteurs or working groups. Unfortunately, many countries, particularly those of the Like-Minded Group, dealt with the periodic reports and recommendations of the treaty bodies in a way that evoked distrust.

44. The retrograde nature of the Working Group's recommendations on the 1503 confidential procedure was beyond comprehension. The Working Group recommended that communications arising from the 1503 procedure should remain confidential, although it was recognized that the efficiency of human rights mechanisms lay in transparency and accountability. Secrecy only served to guarantee impunity and blocked any meaningful dialogue. In many democratic countries, even classified, in other words confidential, documents were made public after a certain period of time. Many countries had adopted laws recognizing the right to information. Therefore, the Working Group's recommendations constituted a violation of that right and of the freedom of expression. His organization suggested that the debates under the 1503 confidential procedure should be made public after a certain period of time.

45. The Working Group recommended that the Sub-Commission should refrain from adopting resolutions containing references to specific countries, under the pretext that that could overlap with the work of the Commission. The Working Group was thus attempting to shield countries from scrutiny by independent experts. Nevertheless, if the aim was to avoid duplication of work, should it be understood that the Sub-Commission could debate situations

that had not been addressed by the Commission on Human Rights? If such was the case, the Sub-Commission should, for example, debate the human rights situation in China at its fifty-second session, since at the current session of the Commission on Human Rights, the draft resolution relating to China had not been adopted.

46. Mr. ÖZDEN (Centre Europe - Tiers Monde (CETIM)) said that the report of the Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission on Human Rights (E/CN.4/2000/112) had been presented as the result of a consensus. However, although the general principle that both sets of rights were equal had been affirmed, that was not reflected in the proposals. For instance, the recommendation to merge the mandate of the Special Rapporteur on foreign debt with that of the independent expert on structural adjustment was unjustified. Likewise, if the proposal to convert the mandate of the Special Rapporteur on toxic waste into that of Special Rapporteur on human rights and the environment seemed praiseworthy, it would nevertheless be necessary to ensure that the new mandate was clearly defined. Lastly, the report provided for a series of measures to be taken in the event of refusal to cooperate in situations of serious violations of civil and political rights. Those measures should also be applied to violations of economic, social and cultural rights. By the same token, it was important to ensure that resources were equally and efficiently shared between the different mandates.

47. Furthermore, it was striking to note that the report said nothing about prevention.

48. The Commission hoped that the Sub-Commission would endeavour to carry out studies and research, but that it would not adopt any country-specific resolutions. That was an interesting proposal provided that the Sub-Commission continued to debate thematic issues, such as the adverse effects of globalization or the implementation of the right to development. He hoped that the proposal to reduce the duration of the Sub-Commission's session to three weeks would be a provisional measure.

49. The idea that a list of the most highly qualified candidates should be maintained by the Office of the High Commissioner for Human Rights could be problematic, since supplementary candidatures would not be accepted other than in exceptional cases.

50. In conclusion, CETIM hoped that any research into the efficiency of human rights mechanisms would be done in good faith and with a view to the effective protection and promotion of all human rights.

The meeting rose at 4.30 p.m.